



LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 14-CRB-0006 DART SR (CO/FA) 2013]

Distribution of the 2013 Digital Audio Recording Technology Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate and comments on intention to conduct paper proceeding.

SUMMARY: The Copyright Royalty Board is announcing the commencement of a proceeding to determine the distribution of the digital audio recording technology royalty fees in the 2013 Sound Recordings Fund (Copyright Owners and Featured Recording Artists Subfunds). The Board is also announcing the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying \$150 filing fee, if applicable. Finally, the Board is announcing the Copyright Royalty Judges' intention to conduct a paper proceeding.

DATES: Petitions to Participate, comments on the intention to conduct a paper proceeding, and applicable filing fee are due no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the \$150 filing fee, if applicable, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the \$150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the \$150 filing fee, must be addressed to: Copyright Royalty Board, P.O. 70977,

Washington, DC 20024-0977. If hand-delivered by a private party, Petitions to Participate, along with the \$150 filing fee, must be brought to the Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, SE, Washington, DC 20559-6000. If delivered by a commercial courier, Petitions to Participate, along with the \$150 filing fee, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE, Washington, DC.

The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE, Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, CRB Program Specialist.

Telephone: (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Audio Home Recording Act of 1992 (the “AHRA”), Public Law No. 102-563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution among interested copyright parties by the Copyright Royalty Judges (“Judges”), provided that the interested copyright parties file a claim with the Copyright Royalty Board (CRB) each year during the months of January and February. 17 U.S.C. 1005, 1007.

The AHRA provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66 2/3% of the royalties and the Musical Works Fund receives the remaining 33 1/3%. These fees are

allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund. The royalty fees allocated to the Sound Recordings Fund are divided among these four subfunds according to the percentages set out in section 1006 of the Copyright Act. 17 U.S.C. 1006(b)(1).¹ Distribution of these fees may occur in one of two ways. The interested copyright parties within each subfund may either negotiate the terms of a settlement as to the division of royalty funds, or the Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy in each subfund. *See* 17 U.S.C. 1006(c).

On August 18, 2014, the CRB received a motion from the Alliance of Artists and Recording Companies (AARC) asking the Judges to authorize a partial distribution of 98% of the 2013 digital audio recording technology (“DART”) Sound Recordings Fund (Copyright Owners and Featured Recording Artists subfunds). The CRB published notice of the settlement and a solicitation of comments in the Federal Register on October 6, 2014.² On December 19, 2014, the Judges granted the motion, finding that there was no reasonable objection to AARC’s proposed partial distribution. *See Order Granting AARC’s Request for Partial Distribution of Royalties from the 2013 DART Sound Recordings Fund (Copyright Owners and Featured Recording Artists Subfunds)* at 3-4 (December 19, 2014 Order). The Judges now commence a proceeding to resolve any existing controversies with respect to the 2013 DART Sound Recordings Fund (Copyright Owners and Featured Recording Artists subfunds).

Commencement of Proceeding

¹ Similarly, the statute prescribes that the royalty fees allocated to the Musical Works Fund be divided equally between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b)(2).

Consistent with 17 U.S.C. 804(b)(8), the Judges determine that a controversy exists as to the distribution of the 2013 DART Sound Recordings Fund. The Judges make this finding based on the fact that AARC notified the Judges that it failed to reach settlements with three claimants to the 2013 Featured Recording Artists Subfund and that it failed to reach settlements with five claimants to the 2013 Copyright Owners Subfund. *December 19, 2014 Order* at 1. In the December 19, 2014 Order, the Judges ordered the parties to notify the Judges whether any remaining disputes in this matter have been resolved. *Id.* at 4. To date, the Judges have not received notification that any of these controversies have been resolved.

Intention to Conduct a Paper Proceeding

In accordance with Section 803(b)(5)(B) of the Copyright Act, the Judges find it appropriate to conduct a paper proceeding in this matter in light of the relatively modest amount of royalties in dispute and the anticipated small number of non-settling claimants. In such proceedings, the Judges determine issues solely on the basis of the filing of a written direct statement by each participant, a response of an opposing participant, and one additional response from the participant. 17 U.S.C. 803(b)(5). Any party wishing to comment on the Judges' intention to conduct a paper proceeding should include such comments in its Petition to Participate.

Petitions to Participate

Petitions to Participate must provide all of the information required by 37 CFR 351.1(b)(2). Petitions to Participate submitted by interested parties whose claims do not exceed

² 79 Fed. Reg. 60185.

\$1,000³ must contain a statement that the party will not seek a distribution of more than \$1,000. No filing fee is required for these parties. Interested parties with claims exceeding \$1,000, however, must submit a filing fee of \$150 with their Petition to Participate or it will be rejected. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to the “Copyright Royalty Board.” If a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Further procedural matters, including scheduling, will be addressed after Petitions to Participate and comments, if any, on the Judges’ intention to conduct a paper proceeding, have been received.

In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Judges, unless the party is an individual who represents herself or himself.

Participants should conform filed electronic documents to the Judges’ Guidelines for Electronic Documents, available online at [www.loc.gov/crb/docs/Guidelines for Electronic Documents.pdf](http://www.loc.gov/crb/docs/Guidelines_for_Electronic_Documents.pdf).

Dated: March 18, 2015.

Suzanne M. Barnett,
Chief U.S. Copyright Royalty Judge.

[BILLING CODE: 1410-72-P]

³ The Copyright Royalty Judge Program Technical Corrections Act, Public Law No. 109-303, changed the amount from \$10,000 to \$1,000.

